

Remote Seller Law – Marketplaces – SDCL 10-64-2

Third-Party Marketplaces and Sellers on the Marketplace

How does South Dakota's remote seller law apply to third-party marketplaces and sellers on the marketplace?

Under current law, which does not change, any seller **with a physical presence** in South Dakota is required to be licensed and pay applicable sales taxes on South Dakota sales regardless of the dollar amount or number of sales made.

South Dakota's remote seller law, SDCL 10-64-2, requires any seller **with no physical presence** in the state to become licensed and pay applicable sales taxes if the seller meets either of the minimum thresholds in the previous or current calendar year:

1. The seller has gross sales into South Dakota exceeding \$100,000; or
2. The seller has 200 or more separate transactions into South Dakota.

Gross sales or transactions include the sale of tangible personal property, any products transferred electronically, or services.

Most third-party marketplaces are not the seller of the products or services offered through the marketplace. **Sellers making sales into South Dakota through a third-party marketplace are responsible for the South Dakota sales taxes that may be due.** The marketplace is not responsible to collect sales taxes on behalf of the sellers on the marketplace.

If the third-party marketplace is the seller of the products or services, the third-party marketplace is responsible to become licensed and pay applicable sales taxes if the third-party marketplace meets either of the minimum thresholds.

Third-party marketplaces may charge sellers for services provided on the marketplace. Any service provided by a third-party marketplace to a South Dakota seller on the marketplace is a service subject to sales tax in South Dakota. If the third-party marketplace meets either of the minimum thresholds for services sold to South Dakota sellers, the third-party marketplace is responsible to become licensed and pay applicable sales taxes.

For your convenience, the South Dakota remote seller law, SDCL 10-64-2, is found below:

10-64-2. Notwithstanding any other provision of law, any seller selling tangible personal property, products transferred electronically, or services for delivery into South Dakota, who does not have a physical presence in the state, is subject to chapters 10-45 and 10-52, shall remit the sales tax and shall follow all applicable procedures and requirements of law as if the seller had a physical presence in the state, provided the seller meets either of the following criteria in the previous calendar year or the current calendar year:

- (1) The seller's gross revenue from the sale of tangible personal property, any product transferred electronically, or services delivered into South Dakota exceeds one hundred thousand dollars; or
- (2) The seller sold tangible personal property, any product transferred electronically, or services for delivery into South Dakota in two hundred or more separate transactions.